

DEPARTMENT OF THE ARMY
Office of the Chief of Engineers
Washington 25, D. C.

EXPIRATIVE UNTIL 29 JULY 1958 UNLESS SOONER RESCINDED OR SUPERSEDED

ENCL

29 January 1958

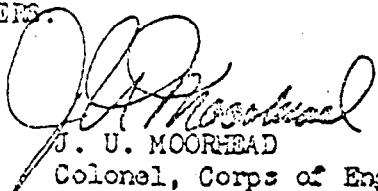
SUBJECT: Comptroller General's Advance Decision Concerning Payment
of the Cost of Relocation of Certain Telephone Facilities

TO: Division Engineers, except Division Engineer, MD
District Engineers, except District Engineers of
U. S. Army Engineer Districts, Baltimore, Eastern
Ocean, Lake Survey, Far East, Okinawa, Charleston,
Tulahoma, and Wilmington, and Districts in MD

1. Reference: Attached copy of letter dated 24 December 1957, from the Comptroller General of the United States addressed to Mr. W. M. Wilson, Disbursing Officer, C/O Chief of Finance, Department of the Army, file B-134242, concerning payment of cost of relocation of certain telephone facilities in accordance with the provisions of Section 2 of the Flood Control Act of 1938, as amended, 52 Stat. 1215 (33 U.S.C. 701 c-1), is transmitted for your information and guidance.

2. Based upon the advance decision of the Comptroller General, set forth in referenced letter, in any instance where a public utility will be destroyed or damaged due to operation of a Civil Works Project and relocation or alteration of the facility is required to continue service to the public, the Government may assume the cost of relocating or altering the facility (but not the cost for a new right-of-way) when in fact the Utility owner is not presently vested with a compensable interest in the existing right-of-way. Negotiations with Utility owners in accordance with the foregoing is authorized under the provisions of Section 2 of the Flood Control Act of 1938, as amended, 52 Stat. 1215 (33 U.S.C. 701 c-1).

FOR THE CHIEF OF ENGINEERS.



J. U. MOORHEAD
Colonel, Corps of Engineers
Assistant Chief of Engineers
for Real Estate

DISTRIBUTION:

Distribution A.
10 cys to Asst. Chf Engrs.
for Real Estate less
enclosures
10 cys to Engr. Comptroller
5 cys to Legal Division
10 cys to Asst. Chf Engrs.
for Civil Works

1 ENCL:

Ltr dated 24 Dec 57



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-134242

December 24, 1957

Mr. W. M. Wilson, Disbursing Officer
c/o Chief of Finance
Department of the Army

Dear Mr. Wilson:

Reference is made to your letter of March 21, 1957, forwarded here by the Office of the Chief of Finance, transmitting a voucher in the amount of \$886 stated in favor of Trans Township Telephone Company under contract No. DA-25-066-CIVENG-56-168, dated December 6, 1955, with the request that an advance decision be rendered as to whether payment thereon is authorized.

The amount of the voucher represents the cost--as specifically agreed in the contract--of the relocation of certain telephone facilities owned by the contractor corporation and located within the boundaries of the Fort Randall Dam and Reservoir Project, South Dakota. Your doubt as to the propriety of payment of the voucher and the validity of the contract arises from the fact, as reported, that the contractor corporation has apparently no record title to any right-of-way or other "compensable property right or interest" relating to the facilities. It is stated in your letter that the telephone lines in question were constructed about 1910 by individual subscribers and were considered as belonging to those individuals. In 1948, the individual owners formed the present corporation, Trans Township Telephone Company, it being understood that all facilities were surrendered to the corporation but no instrument evidencing the transfer being given.

Section 2 of the Flood Control Act of 1938, 52 Stat. 1215, as amended (33 U.S.C. 701c-1), provides in pertinent part:

"* * * Notwithstanding any restrictions, limitations, or requirement of prior consent provided by any other Act, the Secretary of the Army is authorized and directed to acquire in the name of the United States title to all lands, easements, and rights-of-way necessary for any dam and reservoir project or channel improvement or channel rectification project for flood control, with funds heretofore or hereafter appropriated or made available for such projects, and States, political subdivisions thereof, or other responsible local agencies, shall be granted and reimbursed,

Inclosure 1

B-15462

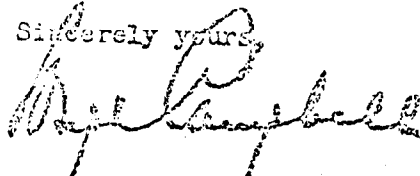
from such funds, sums equivalent to actual expenditures deemed reasonable by the Secretary of the Army and the Chief of Engineers and made by them in acquiring lands, easements, and rights-of-way for any dam and reservoir project, or any channel improvement or channel rectification project for flood control heretofore or herein authorized: Provided, That no reimbursement shall be made for any indirect or speculative damages: Provided further, That lands, easements and rights-of-way shall include lands on which dams, reservoirs, channel improvements, and channel rectifications are located; lands or easement rights in reservoirs and highway, railway, and utility relocation. * * *

The quoted language is believed to provide authority for payment of the cost of relocating public utility facilities actually used in furnishing a public service, under authority of law, by any natural or artificial person possessing the power of eminent domain, in connection with the exercise of a right-of-way. You state that the lines in question have been in service since 1910 and although the present corporation was not created until 1948, the former individual owners appear to have constituted a "telephone company" within the definition of such companies in Section 52.1301 of the South Dakota code. It would therefore seem that a prescriptive right could readily be found, if necessary.

Accordingly, payment on the voucher, which includes no payment for a right-of-way, is authorized, if otherwise correct.

All vouchers and accompanying papers are returned herewith.

Sincerely yours,



Comptroller General
of the United States

Enclosures

RECEIVED